

# **REQUEST FOR PROPOSALS (RFP)**

## **Minnesota Management and Budget**

### **Health Insurance Exchange Public Awareness Marketing/Outreach Campaign**

#### **Project Overview**

##### **Background**

Under the Federal Patient Protection and Affordable Care Act (ACA) enacted in March of 2010 (Public Law 111-148 and 111-152), new mechanisms for comparing and obtaining health care coverage were created called Health Benefit Exchanges ("Exchange"). Exchanges must be operational in each State by January 1, 2014. Minnesota has elected to establish a state-based Exchange.

An Exchange is an organized competitive marketplace to facilitate the comparison, choice, and purchase of health care coverage for individuals and employees of small businesses. Through an Exchange, individuals and employees will have access to comparable information on costs, benefits, health care providers, quality, and customer satisfaction for an array of coverage options, allowing them to use this information to choose and enroll in the health benefit plan that best fits their personal and family needs. Exchanges will also assist eligible individuals and small businesses to receive premium tax credits and cost-sharing reductions or help individuals enroll in federal or state health care programs. By engaging consumers in a one-stop shopping experience with transparent information, Exchanges will make purchasing health insurance easier and more understandable, put more control and choice in the hands of individuals and employees of small businesses, and incent greater market competition.

On December 20, 2012, Minnesota received conditional approval from the U.S. Department of Health and Human Services (HHS) to establish a state-based Exchange. The Exchange will open for enrollment on October 1, 2013. Coverage for plans within the Exchange will become effective January 1, 2014.

##### **Purpose**

Minnesota is planning a statewide public education and awareness campaign aimed at reaching uninsured individuals and populations who will be potential users of its Exchange. This Request for Proposals (RFP) seeks proposals from qualified firms or contractors capable of providing a wide range of creative development, production, media buying and marketing analysis services to design and produce a marketing campaign based on the marketing and outreach strategies outlined or informed by the following documents:

- Public Education and Outreach Market Research Report (Attachment B)
- Outreach and Education White Paper (Attachment C)
- Outreach, Communications and Marketing Work Group Report (Attachment D)
- Communications and Social Media Strategic Plan (Attachment E)
- Brand Platform (to be finalized and released in March 2013)

Approaches will include:

Strategic planning; creative development of advertising (including but not limited to television, radio, print, digital, outdoor, mobile, point of sale, direct response); collateral and/or product development; promotions; account management, and marketing support.

The projected audience for the Exchange is threefold: 1) individuals who may or may not qualify for tax credits for the purchase of health insurance; 2) small businesses who may or may not qualify for tax credits for the purchase of health insurance; and 3) individuals enrolling in Medical Assistance.

The State recognizes that some firms may have a higher level of expertise on a specific section of the scope of work outlined. Given that the statement of work crosses multiple marketing platforms and is targeted towards diverse populations, vendors may want to consider establishing partnerships with other entities that are experts and have experience in specialized areas.

**This RFP is seeking proposals for development and production elements of a public education and awareness campaign. Campaign implementation will be handled by the Exchange staff.**

Submitted proposals will be reviewed and a contractor selected based on the stated evaluation framework.

### **Respondent Eligibility**

Pursuant to section 1311 of the ACA, a health carrier or an entity that is treated under subsection (a) or (b) of section 52 of the Internal Revenue Code of 1986 as a member of the same controlled group of corporations (or under common control with) as a health carrier is not eligible to carry out responsibilities or perform functions required of an Exchange. Respondents must describe how they are an eligible respondent to this RFP (see "Proposal Content" Cover Letter below).

### **Time Frame**

This RFP is seeking development of a public education and awareness campaign that will run from June 2013 through March 2014. The State anticipates a contract will be executed during March 2013 with work commencing April 8, 2013.

### **Goal**

The goal of this RFP is to obtain detailed cost, work plan and timeline proposals for the development and design of a comprehensive statewide public education and awareness campaign that will permeate awareness of the Exchange throughout Minnesota and drive targeted audiences to purchase health insurance on the Exchange. This RFP is seeking innovative and flexible solutions for marketing and promoting the Exchange. Solutions must be flexible to adapt to changing market realities and foster the continuous inclusion of new partnerships that aim to expand the reach of planned outreach and education initiatives.

#### Key Objectives:

- Establish general awareness of the Minnesota Health Insurance Exchange brand and mission
- Develop a campaign that drives enrollment in health insurance plans through the Minnesota Health Insurance Exchange
- Effectively reach diverse audiences including those who are traditionally more uninsured and experiencing health disparities
- Maintain strong endorsement and support from key stakeholders and all Minnesotans

Submitted proposals will be reviewed and a contractor selected based on the stated evaluation framework.

### **Scope of Work**

This RFP is seeking individuals or companies that will design, develop and produce a comprehensive statewide public education and awareness campaign for a health insurance exchange. The Minnesota Health Insurance Exchange is required to be fully operational beginning October 1, 2013. The Exchange anticipates launching the public education and awareness campaign during June 2013. **The ambitious timeline requires the majority of development and production be completed by June 30, 2013.** Proposers must be capable of working in close collaboration with Exchange staff and consultants to carry out contract deliverables within the established timeframe.

All respondents must produce detailed cost, a work plan, and implementation timeline estimates as part of their proposal.

Responders may also propose additional tasks or activities if they will substantially improve the results of the campaign. Proposed optional tasks or activities must be identified and separated from the required items on both the work plan and cost proposal.

The selected contractor will work closely with the following in performing its work: 1) the Exchange marketing and communications director; 2) an Inter-Agency Communicator Committee; and 3) the Health Insurance Exchange Outreach, Communications and Marketing Work Group.

### **Task 1: Design a Multi-faceted Statewide Marketing Campaign to Launch the Exchange**

Building upon the market research, branding, outreach and communications planning work already completed (see attachments), the selected vendor will design and develop a public education/awareness campaign, comprised of a unified creative approach and theme, to effectively reach the targeted audiences.

The proposed solution and approach shall be guided by several key strategies and supporting concepts:

- Build general buzz and awareness of the Exchange to generate enrollment and endorsement.
  - Reach Minnesotans through a set of integrated tactics that use multiple touch points and trusted messengers
  - Design several “waves” leading up to the Exchange launch to amplify efforts
  - Focus substantial activities on Minnesotans that are more likely to be uninsured
  - Position the Exchange as the trusted advisor of quality health insurance plans and something that provides benefits to all Minnesotans
  - Motivate interest and underscore relevance through personal stories
- Activate strong, local networks and a broad base of partnerships
  - Promote the one-on-one help of consumer assistance networks
  - Ensure that agents/brokers are fully integrated into the Exchange
  - Engage community organizations that reach key audiences
  - Tap into existing channels through state agencies and partner organizations
- Maintain two-way conversation and feedback loop
  - Promote the importance of retaining coverage and clearly convey re-enrollment process
  - Implement an active evaluation/feedback plan to refine and adjust communication/outreach efforts

The campaign will include, but not be limited to, the following components:

1. Mass/Paid media – radio, TV, billboards, newspapers, digital, industry publications, etc.
2. Social/Personal media – e-mail messaging, Facebook, Twitter, LinkedIn, YouTube, etc.
3. Earned media – news releases, PSA's, story placements, etc.
4. Targeted media – presentations, webinars, events, direct mail, Town Halls, etc.
5. Promotions
6. Grassroot partnerships
7. Corporate partnerships/sponsorships
8. Campaign evaluation

Substantial strategic planning work for public education and outreach, specifically in the area of communications and social media strategic planning, has already been completed. The deliverable for this task is for the vendor to synthesize the existing information, build upon it by identifying and filling any gaps, and organize it into a unified, tightly focused campaign.

## **Task 2: Development of Collateral Materials**

To support marketing and outreach efforts, a suite of materials must be created that can be used across multiple strategies, tactics and audiences to ensure consistent and streamlined communication. Materials will be tailored to audience segments as much as possible either in original design or through co-branding and customization by community partners. Materials must align with the Exchange brand. Materials for ethnic audiences will be transcribed in a native language.

A comprehensive list of needed materials is still under development, and will be informed by the campaign plan, but the following list can be used as a baseline:

- Photo bank of spokespeople and those featured with personal stories
- Video clips on the Exchange – testimonials from audiences and assisters
- Consumer-focused pre-Oct 1<sup>st</sup> flyer (English, Spanish, Hmong)
- Business-focused pre-Oct 1<sup>st</sup> flyer (English, Spanish, Hmong)
- Consumer-focused post-Oct 1<sup>st</sup> brochure (English, Spanish, Hmong)
- Consumer-focused post-Oct 1<sup>st</sup> palmcard (English, Spanish, Hmong)
- Business-focused post-Oct 1<sup>st</sup> brochure (English, Spanish, Hmong)
- Customizable materials for use by agents/brokers

- Downloadable tools for community partners – flyer, brochure, ad (English, Spanish, Hmong)
- One-pager for community partners/agents on how to promote the Exchange to individuals/families (English, Spanish, Hmong)
- One-pager for community partners/agents on how to promote the Exchange to small employers (English, Spanish, Hmong)
- Fact sheet for insurance carriers
- Instructional brochure or fact sheet for employers to share with employees
- Advertisements (for multiple audience segments)
- Event kit
- Portable display(s) for conferences, events and trade shows

Responders must include consumer testing of creative materials in their proposals. At minimum, the proposer must conduct six (6) focus groups, one in each geographic section of the state. Additional testing may be conducted via phone or webinar formats.

The Exchange intends to exclude (commodity) printing from the scope of work under this contract.

### **Task 3: Media Buying Recommendations, Negotiations, and Placement**

The selected vendor will devise a paid media plan to achieve a best value for the investment. The plan will include statewide placements as well as targeted placements to reach high numbers of uninsured, and in specialized media outlets to reach our key populations. Waves of advertising will run between July 2013 and March 2014 — first to raise awareness of the Exchange and then to drive enrollment. The Responder will utilize research to ensure a diverse media mix. The research will include media audience, ratings/readership, and value-added opportunities (e.g., on-air interviews, brochure distribution at media events, etc.).

Advertising will be placed through the following mediums, defined below, and align with the media usage of the Exchange's audiences:

- Television (e.g. 30-second TV ads)
- Online (e.g. static and animated banner ads; Facebook ads; search engine ads)
- Radio (e.g. 15- and 30-second ads)
- Print (e.g. newspaper)
- Outdoor (e.g. billboards, transtop, bus sides)
- Non-traditional (e.g. mobile, coffee sleeves, grocery store, etc. – could be used in conjunction with promotions and corporate partnerships)
- Additional mediums suggested by the proposer

Proposed recommendations should also include:

- Identification of specific media to be used
- Timing, frequency, penetration and length of placement
- Allocation of placement within selected media
- Justification of media allocation and integration in campaign, cost effectiveness and return on investment
- Itemization of media cost

The budget for media purchases through this RFP is estimated at \$1.5 million. The State does not intend to pay a commission on media purchases.

### **Task 4: Corporate Partnerships Strategy**

The selected vendor will develop a corporate strategy that seeks to reduce the number of uninsured in Minnesota by garnering support from retail, sports/recreation, corporations and other entities through mutually-beneficial partnerships.

The selected vendor will:

- Work with Exchange staff and the Outreach, Communications and Outreach Work Group to identify potential corporate partners
- Collaborate with Exchange staff to create partnership plans
- Leverage existing professional relationships to connect the Exchange to companies whose interests intersect with Exchange marketing and communication goals
- Assist with partnership scope negotiations

Partnership plans may include, but are not limited to:

- Distribution of branded Minnesota Health Insurance Exchange information and/or materials
- Outreach events and information sessions
- Promotion of the Exchange through partner websites, newsletters, etc.
- In-store promotions
- Loyalty programs

### **Task 5: Promotional Strategies**

Either as a stand-alone element or in concert with partnership plans, the selected vendor shall assess and recommend different types of promotional strategies and activities for all appropriate target audiences. The vendor will seek to conceive and create unique promotional opportunities or events to further elevate public awareness and education for the Exchange as a component of the marketing campaign. One possible event for example could be to mark the launch of open enrollment for the Exchange on October 1, 2013.

### **General Proposal Information**

The State reserves the right to interview any responder which may include a presentation or demonstration (see "Proposal Evaluation" below). Any cost incidental for an interview, presentation, or demonstration shall be borne entirely by the respondent.

### **Projected Timeline**

<b>Activity</b>	<b>Date</b>
Question Submittal Period	February 25 – March 6, 4:00 pm CT
Response to Questions	March 8, 4:00 pm CT
<b>RFPs Due</b>	<b>March 18, 2013; 4:00 pm CT</b>
Proposal Reviews Commence	March 19 (estimate)
Interviews, Presentations and Demos (optional)	March 25 (estimate)
Finalist Notified	March 27 (estimate)
Contract Negotiations	March 27-April 5 (estimate)

The State anticipates work to commence April 8, 2013.

Prospective respondents who have any questions regarding this Request for Proposals must submit their questions via e-mail to Mary Sienko, Marketing and Communications Director, at [mary.sienko@state.mn.us](mailto:mary.sienko@state.mn.us) in writing by 4:00 p.m. CT on Wednesday, March 6, 2013.

Responses to all questions received will be made available in writing or e-mail to all parties who received a copy of the Request for Proposals.

Other personnel are **NOT** authorized to discuss this RFP with responders at any time during the solicitation period. Contact regarding this RFP with any personnel other than Mary Sienko, Marketing and Communications Director, could result in disqualification.

Responders may also propose additional tasks or activities if they will substantially improve the results of the campaign. Proposed optional tasks or activities must be identified and separated from the required items on both the work plan and cost proposal.

This RFP does not obligate the State to award a contract or complete the project, and the State reserves the right to cancel the solicitation if it is considered to be in its best interest.

## **Proposal Content**

The following Proposal requirements must be met and clearly attested to for the Proposal to be considered. Proposals that do not comply with the following requirements will not be evaluated.

Proposals exceeding 15 pages per segment or 45 pages in total will not be considered. The cover letter, resumes, work samples and required forms in section 7 are excluded from the page limit. Proposals must be submitted with single spaced text in 11 point font with 1 inch margins and pages consecutively numbered.

Responders must submit the following information:

1. Cover Letter:

1-page cover letter identifying the main contact for the proposal, any proposed subcontractors, and the responder's eligibility as a respondent to this RFP. Respondents must describe how they are an eligible respondent to this RFP. The letter must be signed by an individual who is authorized to bind the company to all statements in the proposal and the services and requirements as stated in the RFP. Proposals from single organizations equipped to perform all the tasks or from a lead contractor with subcontractors are welcome. If an organization proposes to carry out actions associated with this RFP with the assistance of subcontractors, those subcontractors and their roles must be specifically identified in the Cover Letter.

2. Company Overview, Qualifications, and Experience:

- Describe company history and growth.
- Provide a list of personnel, including any proposed subcontractors and their roles, who will work on the campaign, detailing their training and work experience and the anticipated amount and/or portion of time each will devote to this project. Resumes must be submitted for key personnel, including proposed subcontractors.
- Describe your background and experience with similar projects; provide at least three references and work samples. List 3-4 of your current accounts.
- Provide two samples of multi-platform campaigns completed within the past 5 years that demonstrate the Responder's capabilities of meeting the scope of services.
- If applicable, a list of subcontractors whose services will be used and the specific role(s) each subcontractor will have.

3. Response to Questions:

- See Attachment A

4. Project Solutions and Approach:

- Describe responder's understanding of the nature of the project and activities of an Exchange.
- Explain how the proposed solution will meet the project objectives. Address each task item in the scope of work.
- Include a sample media plan that demonstrates an approach to reach targeted diverse, multi-cultural and "hard to reach" populations.

5. Work Plan:

- Include a work plan and timeline.
- Describe proposed project management and interaction/communication with Exchange staff and/or stakeholders for the project.

6. Detailed Cost Estimate:

Provide a detailed cost estimate for the segment. The respondent must tie their cost breakout to specific milestones with the understanding that if the respondent is chosen for implementation, the



contract may reference payment for these specific milestones. The State does not intend to pay commissions on media purchases. Therefore, responders should not include commissions in the sample media plan or cost estimate. Mark-up rates for media buying should be clearly identified.

Provide one copy of the cost proposal in a separately sealed envelope clearly marked on the outside "Cost Proposal" along with the firm's name. (See "Proposal Submission" below.)

7. Required Forms:

- Affidavit of Non Collusion
- Certificate Regarding Lobbying
- Affirmative Action Certification
- Veteran Owned Preference Form (if applicable)

## **Proposal Submission**

Proposals must be expressed or delivered in person to:  
Mary Sienko, Marketing and Communications Director  
Minnesota Health Insurance Exchange  
85 East Seventh Place, Suite 120  
St. Paul, MN 55101

All proposals must be received by the Health Insurance Exchange no later than **4:00 PM, Central Time, Monday, March 18, 2013**. All proposals will be date and time stamped when they are received by the Health Insurance Exchange.

**Late proposals will not be accepted. Fax and email responses will not be considered or reviewed.**

All costs incurred in responding to this RFP will be borne by the responder.

Submit eight (8) paper copies of the technical proposal and one set of work samples. Proposals must be submitted in sealed mailing envelopes or packages with the responder's name and address identified on the outside. Each copy of the proposal must be signed in ink by an authorized member of the firm.

Submit one (1) copy of the cost proposal in a separate sealed envelope clearly marked "Cost Proposal" on the outside in addition to identifying the responder's name and address. For purposes of completing the cost proposal, the State does not make regular payments based upon the passage of time, it only pays for services actually performed or work delivered after it is accomplished.

Proposals will be evaluated on "best value" as specified below. The cost proposal will not be opened by the Evaluation Committee until after the qualifications points are awarded.

## **Proposal Evaluation**

All responses received by the deadline will be reviewed by the State or its agents, including representatives of the Exchange. Proposals will first be reviewed for responsiveness to determine if the minimum requirements have been met. Proposals that fail to meet minimum requirements will not advance to the next phase of the evaluation. The State reserves the right, based on the scores of the proposals, to interview, or conduct demonstrations/presentations. The State reserves the right to seek best and final offers from one or more responders. Proposal materials will become public information following respondent selection and the conclusion of contract negotiations with the selected responder.

A 100-point scale will be used to create the final evaluation recommendation.

### **Mandatory Requirements (Scored as Pass/Fail)**

The following will be considered on a pass/fail basis:

1. Proposals must be received on or before the due date and time specified in this solicitation.
2. Proposals must meet the requirements identified in "Proposal Content" above.

### **Evaluation Factors (Scored based on percentage)**

The factors and weighting on which proposals will be judged are:

1. Company Overview, Qualifications, and Experience	10%
2. Response to Questions (Attachment A)	10%
3. Project Solutions and Approach	40%
4. Work Plan	10%
5. Detailed cost estimate	30%

## **General Requirements**

### **Affidavit of Noncollusion**

Each responder must complete the attached Affidavit of Noncollusion and include it with the response.

### **Conflicts of Interest**

Responder must provide a list of all entities with which it has relationships that create, or appear to create, a conflict of interest with the work that is contemplated in this request for proposals. The list must identify the name of the entity, the relationship, and a discussion of the conflict.

### **Proposal Contents**

By submission of a proposal, Responder warrants that the information provided is true, correct and reliable for purposes of evaluation for potential contract award. The submission of inaccurate or misleading information may be grounds for disqualification from the award as well as subject the responder to suspension or debarment proceedings as well as other remedies available by law.

### **Disposition of Responses**

All materials submitted in response to this RFP will become property of the State and will become public record in accordance with Minnesota Statutes, section 13.591, after the evaluation process is completed. Pursuant to the statute, completion of the evaluation process occurs when the government entity has completed negotiating the contract with the selected vendor. If the Responder submits information in response to this RFP that it believes to be trade secret materials, as defined by the Minnesota Government Data Practices Act, Minnesota Statute § 13.37, the Responder must:

- clearly mark all trade secret materials in its response at the time the response is submitted,
- include a statement with its response justifying the trade secret designation for each item, and
- defend any action seeking release of the materials it believes to be trade secret, and indemnify and hold harmless the State, its agents and employees, from any judgments or damages awarded against the State in favor of the party requesting the materials, and any and all costs connected with that defense. This indemnification survives the State's award of a contract. In submitting a response to this RFP, the Responder agrees that this indemnification survives as long as the trade secret materials are in possession of the State.

The State will not consider the prices submitted by the Responder to be proprietary or trade secret materials.

Notwithstanding the above, if the State contracting party is part of the judicial branch, the release of data shall be in accordance with the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court as the same may be amended from time to time.

### **Contingency Fees Prohibited**

Pursuant to Minnesota Statutes Section 10A.06, no person may act as or employ a lobbyist for compensation that is dependent upon the result or outcome of any legislation or administrative action.



## **Sample Contract**

You should be aware of the State's standard contract terms and conditions in preparing your response. A sample State of Minnesota Professional/Technical Services Contract is attached for your reference. Much of the language reflected in the contract is required by statute. If you take exception to any of the terms, conditions or language in the contract, you must indicate those exceptions in your response to the RFP; certain exceptions may result in your proposal being disqualified from further review and evaluation. Only those exceptions indicated in your response to the RFP will be available for discussion or negotiation.

## **Reimbursements**

Reimbursement for travel and subsistence expenses actually and necessarily incurred by the contractor as a result of the contract will be in no greater amount than provided in the current "Commissioner's Plan" promulgated by the commissioner of Employee Relations. Reimbursements will not be made for travel and subsistence expenses incurred outside Minnesota unless it has received the State's prior written approval for out of state travel. Minnesota will be considered the home state for determining whether travel is out of state.

## **Organizational Conflicts of Interest**

The responder warrants that, to the best of its knowledge and belief, and except as otherwise disclosed, there are no relevant facts or circumstances which could give rise to organizational conflicts of interest. An organizational conflict of interest exists when, because of existing or planned activities or because of relationships with other persons, a vendor is unable or potentially unable to render impartial assistance or advice to the State, or the vendor's objectivity in performing the contract work is or might be otherwise impaired, or the vendor has an unfair competitive advantage. The responder agrees that, if after award, an organizational conflict of interest is discovered, an immediate and full disclosure in writing must be made to the Assistant Director of the Department of Administration's Materials Management Division ("MMD") which must include a description of the action which the contractor has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, the State may, at its discretion, cancel the contract. In the event the responder was aware of an organizational conflict of interest prior to the award of the contract and did not disclose the conflict to MMD, the State may terminate the contract for default. The provisions of this clause must be included in all subcontracts for work to be performed similar to the service provided by the prime contractor, and the terms "contract," "contractor," and "contracting officer" modified appropriately to preserve the State's rights.

## **Nonvisual Access Standards**

Nonvisual access standards require:

- 1) The effective interactive control and use of the technology, including the operating system, applications programs, prompts, and format of the data presented, are readily achievable by nonvisual means;
- 2) That the nonvisual access technology must be compatible with information technology used by other individuals with whom the blind or visually impaired individual must interact;
- 3) That nonvisual access technology must be integrated into networks used to share communications among employees, program participants, and the public; and
- 4) That the nonvisual access technology must have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

## **Minnesota IT Accessibility Standards**

The vendor must comply with Minnesota IT accessibility standards to the extent applicable for services described above in "Segment 3: Public Relations". Minnesota IT accessibility standards may be found at: [http://www.mmd.admin.state.mn.us/pdf/accessibility\\_standard.pdf](http://www.mmd.admin.state.mn.us/pdf/accessibility_standard.pdf)

## **Preference to Targeted Group and Economically Disadvantaged Business and Individuals**

In accordance with Minnesota Rules, part 1230.1810, subpart B and Minnesota Rules, part 1230.1830, certified Targeted Group Businesses and individuals submitting proposals as prime contractors will receive a six percent preference in the evaluation of their proposal, and certified Economically Disadvantaged Businesses and individuals submitting proposals as prime contractors will receive a six percent preference

in the evaluation of their proposal. Eligible TG businesses must be currently certified by the Materials Management Division prior to the solicitation opening date and time. For information regarding certification, contact the Materials Management Helpline at 651.296.2600, or you may reach the Helpline by email at [mmdhelp.line@state.mn.us](mailto:mmdhelp.line@state.mn.us). For TTY/TDD communications, contact the Helpline through the Minnesota Relay Services at 1.800.627.3529.

### **Veteran-Owned Preference**

In accordance with Minn. Stat. § 16C.16, subd. 6a, (a) Except when mandated by the federal government as a condition of receiving federal funds, the commissioner shall award up to a six percent preference on state procurement to **certified small businesses** that are **majority-owned and operated by**:

- (1) recently separated veterans who have served in active military service, at any time on or after September 11, 2001, and who have been discharged under honorable conditions from active service, as indicated by the person's United States Department of Defense form DD-214 or by the commissioner of veterans affairs;
- (2) veterans with service-connected disabilities, as determined at any time by the United States Department of Veterans Affairs; or
- (3) any other veteran-owned small businesses certified under section [16C.19](#), paragraph (d).

In accordance with Minn. Stat. § 16C.19 (d), a veteran-owned small business, the principal place of business of which is in Minnesota, is certified if it has been verified by the United States Department of Veterans Affairs as being either a veteran-owned small business or a service disabled veteran-owned small business, in accordance with Public Law 109-461 and Code of Federal Regulations, title 38, part 74.

To receive a preference the veteran-owned small business must meet the statutory requirements above by the solicitation opening date and time.

If you are claiming the veteran-owned preference, **attach documentation, sign and return the Veteran-Owned Preference Form with your response to the solicitation.** Only eligible veteran-owned small businesses that meet the statutory requirements and provide adequate documentation will be given the preference.

### **Foreign Outsourcing of Work Prohibited**

All services under this contract shall be performed within the borders of the United States. All storage and processing of information shall be performed within the borders of the United States. This provision also applies to work performed by subcontractors at all tiers.

### **Human Rights Requirements**

For all contracts estimated to be in excess of \$100,000, responders are required to complete the attached Affirmative Action Data page and return it with the response. As required by Minnesota Rule 5000.3600, "It is hereby agreed between the parties that Minnesota Statute § 363A.36 and Minnesota Rule 5000.3400 - 5000.3600 are incorporated into any contract between these parties based upon this specification or any modification of it. A copy of Minnesota Statute § 363A.36 and Minnesota Rule 5000.3400 - 5000.3600 are available upon request from the contracting agency."

### **Certification Regarding Lobbying**

Federal money will be used or may potentially be used to pay for all or part of the work under the contract, therefore the Proposer must complete the attached **Certification Regarding Lobbying** and submit it as part of its proposal.

### **Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion.**

Federal money will be used or may potentially be used to pay for all or part of the work under the contract, therefore the Proposer must certify the following, as required by the regulations implementing Executive Order 12549.

## **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions**

### **Instructions for Certification**

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms *covered transaction*, *debarred*, *suspended*, *ineligible*, *lower tier covered transaction*, *participant*, *person*, *primary covered transaction*, *principal*, *proposal*, and *voluntarily excluded*, as used in this clause, have the meaning set out in the Definitions and Coverages sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this response that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-- Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

## **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

## Insurance Requirements

- A. Contractor shall not commence work under the contract until they have obtained all the insurance described below and the State of Minnesota has approved such insurance. Contractor shall maintain such insurance in force and effect throughout the term of the contract.
- B. Contractor is required to maintain and furnish satisfactory evidence of the following insurance policies:

1. **Workers' Compensation Insurance:** Except as provided below, Contractor must provide Workers' Compensation insurance for all its employees and, in case any work is subcontracted, Contractor will require the subcontractor to provide Workers' Compensation insurance in accordance with the statutory requirements of the State of Minnesota, including Coverage B, Employer's Liability. Insurance **minimum** limits are as follows:

\$100,000 – Bodily Injury by Disease per employee  
\$500,000 – Bodily Injury by Disease aggregate  
\$100,000 – Bodily Injury by Accident

If Minnesota Statute 176.041 exempts Contractor from Workers' Compensation insurance or if the Contractor has no employees in the State of Minnesota, Contractor must provide a written statement, signed by an authorized representative, indicating the qualifying exemption that excludes Contractor from the Minnesota Workers' Compensation requirements.

If during the course of the contract the Contractor becomes eligible for Workers' Compensation, the Contractor must comply with the Workers' Compensation Insurance requirements herein and provide the State of Minnesota with a certificate of insurance.

2. **Commercial General Liability Insurance:** Contractor is required to maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as from claims for property damage, including loss of use which may arise from operations under the Contract whether the operations are by the Contractor or by a subcontractor or by anyone directly or indirectly employed by the Contractor under the contract. Insurance **minimum** limits are as follows:

\$2,000,000 – per occurrence  
\$2,000,000 – annual aggregate  
\$2,000,000 – annual aggregate – Products/Completed Operations

The following coverages shall be included:

Premises and Operations Bodily Injury and Property Damage  
Personal and Advertising Injury  
Blanket Contractual Liability  
Products and Completed Operations Liability  
State of Minnesota named as an Additional Insured

3. **Commercial Automobile Liability Insurance:** Contractor is required to maintain insurance protecting it from claims for damages for bodily injury as well as from claims for property damage resulting from the ownership, operation, maintenance or use of all owned, hired, and non-owned autos which may arise from operations under this contract, and in case any work is subcontracted the contractor will require the subcontractor to maintain Commercial Automobile Liability insurance. Insurance **minimum** limits are as follows:

\$2,000,000 – per occurrence Combined Single limit for Bodily Injury and Property Damage

In addition, the following coverages must be included:

Owned, Hired, and Non-owned Automobile

**4. Professional/Technical, Errors and Omissions, and/or Miscellaneous Liability Insurance**

This policy will provide coverage for all claims the contractor may become legally obligated to pay resulting from any actual or alleged negligent act, error, or omission related to Contractor's professional services required under the contract.

Contractor is required to carry the following **minimum** limits:

\$2,000,000 – per claim or event

\$2,000,000 – annual aggregate

Any deductible will be the sole responsibility of the Contractor and may not exceed \$50,000 without the written approval of the State. If the Contractor desires authority from the State to have a deductible in a higher amount, the Contractor shall so request in writing, specifying the amount of the desired deductible and providing financial documentation by submitting the most current audited financial statements so that the State can ascertain the ability of the Contractor to cover the deductible from its own resources.

The retroactive or prior acts date of such coverage shall not be after the effective date of this Contract and Contractor shall maintain such insurance for a period of at least three (3) years, following completion of the work. If such insurance is discontinued, extended reporting period coverage must be obtained by Contractor to fulfill this requirement.

**C. Additional Insurance Conditions:**

- Contractor's policy(ies) shall be primary insurance to any other valid and collectible insurance available to the State of Minnesota with respect to any claim arising out of Contractor's performance under this contract;
- Contractor's policy(ies) and Certificate(s) of Insurance shall contain a provision that coverage afforded under the policy(ies) shall not be cancelled without at least thirty (30) days advanced written notice to the State of Minnesota;
- Contractor is responsible for payment of Contract related insurance premiums and deductibles;
- If Contractor is self-insured, a Certificate of Self-Insurance must be attached;
- Contractor's policy(ies) shall include legal defense fees in addition to its liability policy limits, with the exception of B.4 above;
- Contractor shall obtain insurance policy(ies) from insurance company(ies) having an "AM BEST" rating of A- (minus); Financial Size Category (FSC) VII or better, and authorized to do business in the State of Minnesota; and
- An Umbrella or Excess Liability insurance policy may be used to supplement the Contractor's policy limits to satisfy the full policy limits required by the Contract.

D. The State reserves the right to immediately terminate the contract if the contractor is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against the contractor. All insurance policies must be open to inspection by the State, and copies of policies must be submitted to the State's authorized representative upon written request.

E. The successful responder is required to submit Certificates of Insurance acceptable to the State of MN as evidence of insurance coverage requirements prior to commencing work under the contract.

**E-Verify Certification (In accordance with Minn. Stat. §16C.075)**

By submission of a proposal for services in excess of \$50,000, Contractor certifies that as of the date of services performed on behalf of the State, Contractor and all its subcontractors will have implemented or be in the process of implementing the federal E-Verify program for all newly hired employees in the United States who will perform work on behalf of the State. In the event of contract award, Contractor shall be

responsible for collecting all subcontractor certifications and may do so utilizing the E-Verify Subcontractor Certification Form available at <http://www.mmd.admin.state.mn.us/doc/VerifySubCertForm.doc>. All subcontractor certifications must be kept on file with Contractor and made available to the State upon request.



**CERTIFICATION REGARDING LOBBYING**  
For State of Minnesota Contracts and Grants over \$100,000

The undersigned certifies, to the best of his or her knowledge and belief that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, A Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

\_\_\_\_\_  
Organization Name

\_\_\_\_\_  
Name and Title of Official Signing for Organization

By: \_\_\_\_\_  
Signature of Official

\_\_\_\_\_  
Date

## State Of Minnesota – Affirmative Action Certification

**If your response to this solicitation is or could be in excess of \$100,000**, complete the information requested below to determine whether you are subject to the Minnesota Human Rights Act (Minnesota Statutes 363A.36) certification requirement, and to provide documentation of compliance if necessary. **It is your sole responsibility to provide this information and—if required—to apply for Human Rights certification prior to the due date of the bid or proposal and to obtain Human Rights certification prior to the execution of the contract. The State of Minnesota is under no obligation to delay proceeding with a contract until a company receives Human Rights certification** BOX A – For companies which have employed more than 40 full-time employees within Minnesota on any single working day during the previous 12 months. All other companies proceed to BOX B.

Your response will be rejected unless your business:

has a current Certificate of Compliance issued by the Minnesota Department of Human Rights (MDHR)

—or—

has submitted an affirmative action plan to the MDHR, which the Department received prior to the date the responses are due.

Check one of the following statements if you have employed more than 40 full-time employees in Minnesota on any single working day during the previous 12 months:

- ☐ We have a current Certificate of Compliance issued by the MDHR. **Proceed to BOX C. Include a copy of your certificate with your response.**
- ☐ We do not have a current Certificate of Compliance. However, we submitted an Affirmative Action Plan to the MDHR for approval, which the Department received on \_\_\_\_\_ (date). **Proceed to BOX C.**
- ☐ We do not have a Certificate of Compliance, nor has the MDHR received an Affirmative Action Plan from our company. **We acknowledge that our response will be rejected. Proceed to BOX C. Contact the Minnesota Department of Human Rights for assistance.** (See below for contact information.)

**Please note:** Certificates of Compliance must be issued by the Minnesota Department of Human Rights. Affirmative Action Plans approved by the Federal government, a county, or a municipality must still be received, reviewed, and approved by the Minnesota Department of Human Rights before a certificate can be issued.

### BOX B – For those companies not described in BOX A

Check below.

- ☐ We have not employed more than 40 full-time employees on any single working day in Minnesota within the previous 12 months. **Proceed to BOX C.**

### BOX C – For all companies

By signing this statement, you certify that the information provided is accurate and that you are authorized to sign on behalf of the responder. You also certify that you are in compliance with federal affirmative action requirements that may apply to your company. (These requirements are generally triggered only by participating as a prime or subcontractor on federal projects or contracts. Contractors are alerted to these requirements by the federal government.)

Name of Company: \_\_\_\_\_ Date \_\_\_\_\_

Authorized Signature: \_\_\_\_\_ Telephone number: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

#### For assistance with this form, contact:

Minnesota Department of Human Rights, Compliance & Community Relations

Mail: The Freeman Building 625 Robert Street North, Saint Paul, MN 55155 TC Metro: (651) 296-5663 Toll Free: 800-657-3704

Web: [www.humanrights.state.mn.us](http://www.humanrights.state.mn.us)

Fax: (651) 296-9042 TTY: (651) 296-1283

Email: [compliance.mdhr@state.mn.us](mailto:compliance.mdhr@state.mn.us)

**STATE OF MINNESOTA  
AFFIDAVIT OF NONCOLLUSION**

I swear (or affirm) under the penalty of perjury:

1. That I am the Responder (if the Responder is an individual), a partner in the company (if the Responder is a partnership), or an officer or employee of the responding corporation having authority to sign on its behalf (if the Responder is a corporation);
2. That the attached proposal submitted in response to the \_\_\_\_\_ Request for Proposals has been arrived at by the Responder independently and has been submitted without collusion with and without any agreement, understanding or planned common course of action with, any other Responder of materials, supplies, equipment or services described in the Request for Proposal, designed to limit fair and open competition;
3. That the contents of the proposal have not been communicated by the Responder or its employees or agents to any person not an employee or agent of the Responder and will not be communicated to any such persons prior to the official opening of the proposals; and
4. That I am fully informed regarding the accuracy of the statements made in this affidavit.

Responder's Firm Name: \_\_\_\_\_

Authorized Representative (Please Print) \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Subscribed and sworn to me this \_\_\_\_\_ day of \_\_\_\_\_

Notary Public

My commission expires: \_\_\_\_\_

**STATE OF MINNESOTA  
VETERAN-OWNED PREFERENCE FORM**

In accordance with Minn. Stat. § 16C.16, subd. 6a, (a) Except when mandated by the federal government as a condition of receiving federal funds, the commissioner shall award up to a six percent preference in the amount bid on state procurement to **certified small businesses** that are **majority-owned and operated by**:

- (1) recently separated veterans who have served in active military service, at any time on or after September 11, 2001, and who have been discharged under honorable conditions from active service, as indicated by the person's United States Department of Defense form DD-214 or by the commissioner of veterans affairs;
- (2) veterans with service-connected disabilities, as determined at any time by the United States Department of Veterans Affairs; or
- (3) any other veteran-owned small businesses certified under section 16C.19, paragraph (d).

In accordance with Minn. Stat. § 16C.19 (d), a veteran-owned small business, the principal place of business of which is in Minnesota, is certified if it has been verified by the United States Department of Veterans Affairs as being either a veteran-owned small business or a service disabled veteran-owned small business, in accordance with Public Law 109-461 and Code of Federal Regulations, title 38, part 74.

To receive a preference the veteran-owned small business must meet the statutory requirements above by the solicitation opening date and time. When responding to a Request for Bid (RFB), the preference is applied only to the first \$500,000 of the response. When responding to a Request for Proposal (RFP), the preference is applied as detailed in the RFP.

If you are claiming the veteran-owned preference, **attach documentation, sign and return this form with your response to the solicitation.** Only eligible veteran-owned small businesses that meet the statutory requirements and provide adequate documentation will be given the preference.

**I HEREBY CERTIFY THAT THE FIRM LISTED BELOW:**

My firm is a certified small business and it is majority-owned and operated by an eligible person as defined by Minn. Stat. § 16C.16, subd. 6a.

☐ **Yes** ☐ **No** (must check yes or no) **State the type of documentation attached:** \_\_\_\_\_

**DOCUMENTATION MUST BE PROVIDED FOR ONE OF THE FOLLOWING REQUIREMENTS:**

- ☐ (1) recently separated veterans who have served in active military service, at any time on or after September 11, 2001, and who have been discharged under honorable conditions from active service, as indicated by the person's United States Department of Defense form DD-214 or by the commissioner of veterans affairs;

**State the type of documentation attached:** \_\_\_\_\_

- ☐ (2) veterans with service-connected disabilities, as determined at any time by the United States Department of Veterans Affairs;

**State the type of documentation attached:** \_\_\_\_\_

- ☐ (3) any other veteran-owned small businesses certified under Minnesota Statute Section 16C.19, paragraph (d).

**State the type of documentation attached:** \_\_\_\_\_

Name of Company: \_\_\_\_\_  
Authorized Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Title: \_\_\_\_\_

**IF YOU ARE CLAIMING THE VETERAN-OWNED PREFERENCE, ATTACH DOCUMENTATION, SIGN AND RETURN THIS FORM WITH YOUR RESPONSE TO THE SOLICITATION.**

*If you take exception to any of the terms, conditions or language in the contract, you must indicate those exceptions in your response to the RFP; certain exceptions may result in your proposal being disqualified from further review and evaluation. Only those exceptions indicated in your response to the RFP will be available for discussion or negotiation.*

# Professional and Technical Services Contract

State of Minnesota

SWIFT Contract No.:

This Contract is between the State of Minnesota, acting through its \_\_\_\_\_  
("State") and \_\_\_\_\_ ("Contractor").

## Recitals

1. Under Minn. Stat. § 15.061 the State is empowered to engage such assistance as deemed necessary.
2. The State is in need of \_\_\_\_\_.
3. The Contractor represents that it is duly qualified and agrees to perform all services described in this Contract to the satisfaction of the State.

## Contract

### 1. Term of Contract

- 1.1 **Effective date:** \_\_\_\_\_, or the date the State obtains all required signatures under Minn. Stat. § 16C.05, subd. 2, whichever is later. The Contractor must not begin work under this Contract until this Contract is fully executed and the Contractor has been notified by the State's Authorized Representative to begin the work.
- 1.2 **Expiration date:** \_\_\_\_\_, or until all obligations have been satisfactorily fulfilled, whichever occurs first.
- 1.3 **Survival of terms:** The following clauses survive the expiration or cancellation of this Contract: 8. Indemnification; 9. State audits; 10. Government data practices and intellectual property; 14. Publicity and endorsement; 15. Governing law, jurisdiction, and venue; and 16. Data disclosure.

### 2. Contractor's duties

The Contractor, who is not a State employee, will:

\_\_\_\_\_

\_\_\_\_\_

### 3. Time

The Contractor must comply with all the time requirements described in this Contract. In the performance of this Contract, time is of the essence.

### 4. Consideration and payment

**4.1 Consideration.** The State will pay for all services performed by the Contractor under this Contract as follows:

- (a) **Compensation.** The Contractor will be paid \$\_\_\_\_\_.
- (b) **Travel expenses.** Reimbursement for travel and subsistence expenses actually and necessarily incurred by the Contractor as a result of this Contract will not exceed \$\_\_\_\_\_; provided that the Contractor will be reimbursed for travel and subsistence expenses in the same manner and in no greater amount than provided in the current "Commissioner's Plan" established by the Commissioner of Minnesota Management and Budget which is incorporated in to this Contract by reference. The Contractor will not be reimbursed for travel and subsistence expenses incurred outside Minnesota unless it has received the State's prior written approval for out-of-state travel. Minnesota will be considered the home state for determining whether travel is out of state.
- (c) **Total obligation.** The total obligation of the State for all compensation and reimbursements to the

Contractor under this Contract will not exceed \$ \_\_\_\_\_.

#### **4.2 Payment.**

- (a) **Invoices.** The State will promptly pay the Contractor after the Contractor presents an itemized invoice for the services actually performed and the State's Authorized Representative accepts the invoiced services. Invoices must be submitted timely and according to the following schedule:

- (b) **Retainage.** Under Minn. Stat. § 16C.08, subd. 5(b), no more than 90 percent of the amount due under this Contract may be paid until the final product of this Contract has been reviewed by the State's agency head. The balance due will be paid when the State's agency head determines that the Contractor has satisfactorily fulfilled all the terms of this Contract.
- (c) **Federal funds.** (Where applicable, if blank this section does not apply.) Payments under this Contract will be made from federal funds obtained by the State through \_\_\_\_\_. The Contractor is responsible for compliance with all federal requirements imposed on these funds and accepts full financial responsibility for any requirements imposed by the Contractor's failure to comply with federal requirements.

#### **5. Conditions of payment**

All services provided by the Contractor under this Contract must be performed to the State's satisfaction, as determined at the sole discretion of the State's Authorized Representative and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations including business registration requirements of the Office of the Secretary of State. The Contractor will not receive payment for work found by the State to be unsatisfactory or performed in violation of federal, state, or local law.

#### **6. Authorized Representative**

The State's Authorized Representative is \_\_\_\_\_, or his/her successor, and has the responsibility to monitor the Contractor's performance and the authority to accept the services provided under this Contract. If the services are satisfactory, the State's Authorized Representative will certify acceptance on each invoice submitted for payment.

The Contractor's Authorized Representative is \_\_\_\_\_, or his/her successor. If the Contractor's Authorized Representative changes at any time during this Contract, the Contractor must immediately notify the State.

#### **7. Assignment, amendments, waiver, and contract complete**

- 7.1 Assignment.** The Contractor may neither assign nor transfer any rights or obligations under this Contract without the prior consent of the State and a fully executed assignment agreement, executed and approved by the same parties who executed and approved this Contract, or their successors in office.
- 7.2 Amendments.** Any amendment to this Contract must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original Contract, or their successors in office.
- 7.3 Waiver.** If the State fails to enforce any provision of this Contract, that failure does not waive the provision or its right to enforce it.
- 7.4 Contract complete.** This Contract contains all negotiations and agreements between the State and the Contractor. No other understanding regarding this Contract, whether written or oral, may be used to bind either party.

#### **8. Indemnification**

In the performance of this Contract by Contractor, or Contractor's agents or employees, the Contractor must indemnify, save, and hold harmless the State, its agents, and employees, from any claims or causes of action, including attorney's fees incurred by the State, to the extent caused by Contractor's:

- a) Intentional, willful, or negligent acts or omissions; or
- b) Actions that give rise to strict liability; or
- c) Breach of contract or warranty.

The indemnification obligations of this section do not apply in the event the claim or cause of action is the result of the State's sole negligence. This clause will not be construed to bar any legal remedies the Contractor may have for the State's failure to fulfill its obligation under this Contract.

#### **9. State audits**

Under Minn. Stat. § 16C.05, subd. 5, the Contractor's books, records, documents, and accounting procedures and practices relevant to this Contract are subject to examination by the State and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this Contract.



## **10. Government data practices and intellectual property**

**10.1 Government data practices.** The Contractor and State must comply with the Minnesota Government Data Practices Act, Minn. Stat. ch. 13, (or, if the State contracting party is part of the Judicial Branch, with the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court as the same may be amended from time to time) as it applies to all data provided by the State under this Contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Contractor under this Contract. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data governed by the Minnesota Government Practices Act, Minn. Stat. ch. 13, by either the Contractor or the State.

If the Contractor receives a request to release the data referred to in this clause, the Contractor must immediately notify and consult with the State's Authorized Representative as to how the Contractor should respond to the request. The Contractor's response to the request shall comply with applicable law.

### **10.2 Intellectual property rights.**

- (a) *Intellectual property rights.* The State owns all rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks, and service marks in the works and documents created and paid for under this Contract. The "works" means all inventions, improvements, discoveries (whether or not patentable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, and disks conceived, reduced to practice, created or originated by the Contractor, its employees, agents, and subcontractors, either individually or jointly with others in the performance of this Contract. "Works" includes documents. The "documents" are the originals of any databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks, or other materials, whether in tangible or electronic forms, prepared by the Contractor, its employees, agents, or subcontractors, in the performance of this Contract. The documents will be the exclusive property of the State and all such documents must be immediately returned to the State by the Contractor upon completion or cancellation of this Contract. To the extent possible, those works eligible for copyright protection under the United States Copyright Act will be deemed to be "works made for hire." The Contractor assigns all right, title, and interest it may have in the works and the documents to the State. The Contractor must, at the request of the State, execute all papers and perform all other acts necessary to transfer or record the State's ownership interest in the works and documents.
- (b) *Obligations*
- (1) Notification. Whenever any invention, improvement, or discovery (whether or not patentable) is made or conceived for the first time or actually or constructively reduced to practice by the Contractor, including its employees and subcontractors, in the performance of this Contract, the Contractor will immediately give the State's Authorized Representative written notice thereof, and must promptly furnish the State's Authorized Representative with complete information and/or disclosure thereon.
  - (2) Representation. The Contractor must perform all acts, and take all steps necessary to ensure that all intellectual property rights in the works and documents are the sole property of the State, and that neither Contractor nor its employees, agents, or subcontractors retain any interest in and to the works and documents. The Contractor represents and warrants that the works and documents do not and will not infringe upon any intellectual property rights of other persons or entities. Notwithstanding Clause 8, the Contractor will indemnify; defend, to the extent permitted by the Attorney General; and hold harmless the State, at the Contractor's expense, from any action or claim brought against the State to the extent that it is based on a claim that all or part of the works or documents infringe upon the intellectual property rights of others. The Contractor will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages, including but not limited to, attorney fees. If such a claim or action arises, or in the Contractor's or the State's opinion is likely to arise, the Contractor must, at the State's discretion, either procure for the State the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing works or documents as necessary and appropriate to obviate the infringement claim. This remedy of the State will be in addition to and not exclusive of other remedies provided by law.

## **11. Workers' compensation and other insurance**

Contractor certifies that it is in compliance with all insurance requirements specified in the solicitation document relevant to this Contract. Contractor shall not commence work under the Contract until they have obtained all the insurance specified in the solicitation document. Contractor shall maintain such insurance in force and effect throughout the term of the Contract.

Further, the Contractor certifies that it is in compliance with Minn. Stat. § 176.181, subd. 2, pertaining to workers' compensation insurance coverage. The Contractor's employees and agents will not be considered State employees.

Any claims that may arise under the Minnesota Workers' Compensation Act on behalf of these employees or agents and any claims made by any third party as a consequence of any act or omission on the part of these employees or agents are in no way the State's obligation or responsibility.

**12. Debarment by State, its departments, commissions, agencies, or political subdivisions**

Contractor certifies that neither it nor its principals is presently debarred or suspended by the State, or any of its departments, commissions, agencies, or political subdivisions. Contractor's certification is a material representation upon which the Contract award was based. Contractor shall provide immediate written notice to the State's Authorized Representative if at any time it learns that this certification was erroneous when submitted or becomes erroneous by reason of changed circumstances.

**13. Certification regarding debarment, suspension, ineligibility, and voluntary exclusion**

Federal money will be used or may potentially be used to pay for all or part of the work under the Contract, therefore Contractor certifies that it is in compliance with federal requirements on debarment, suspension, ineligibility and voluntary exclusion specified in the solicitation document implementing Executive Order 12549. Contractor's certification is a material representation upon which the Contract award was based.

**14. Publicity and endorsement**

**14.1 Publicity.** Any publicity regarding the subject matter of this Contract must identify the State as the sponsoring agency and must not be released without prior written approval from the State's Authorized Representative. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Contractor individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Contract.

**14.2 Endorsement.** The Contractor must not claim that the State endorses its products or services.

**15. Governing law, jurisdiction, and venue**

Minnesota law, without regard to its choice-of-law provisions, governs this Contract. Venue for all legal proceedings out of this Contract, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

**16. Data disclosure**

Under Minn. Stat. § 270C.65, subd. 3 and other applicable law, the Contractor consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to the State, to federal and state agencies, and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state laws which could result in action requiring the Contractor to file state tax returns, pay delinquent state tax liabilities, if any, or pay other state liabilities.

**17. Payment to subcontractors**

(If applicable) As required by Minn. Stat. § 16A.1245, the prime Contractor must pay all subcontractors, less any retainage, within 10 calendar days of the prime Contractor's receipt of payment from the State for undisputed services provided by the subcontractor(s) and must pay interest at the rate of one and one-half percent per month or any part of a month to the subcontractor(s) on any undisputed amount not paid on time to the subcontractor(s).

**18. Termination**

**18.1 Termination by the State.** The State or Commissioner of Administration may cancel this Contract at any time, with or without cause, upon 30 days' written notice to the Contractor. Upon termination, the Contractor will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.

**18.2 Termination for insufficient funding.** The State may immediately terminate this Contract if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written or fax notice to the Contractor. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the Contractor will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The State will not be assessed any penalty if the Contract is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The State must provide the Contractor notice of the lack of funding within a reasonable time of the State's receiving that notice.

**19. Non-discrimination (In accordance with Minn. Stat. § 181.59)**

The Contractor will comply with the provisions of Minn. Stat. § 181.59 which require:

*"Every contract for or on behalf of the state of Minnesota, or any county, city, town, township, school, school district, or any other district in the state, for materials, supplies, or construction shall contain provisions by which the contractor agrees:*

- (1) that, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no contractor, material supplier, or vendor, shall, by reason of race, creed, or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates;*
- (2) that no contractor, material supplier, or vendor, shall, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause (1) of this section, or on being hired, prevent, or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed, or color;*
- (3) that a violation of this section is a misdemeanor; and*
- (4) that this contract may be canceled or terminated by the state, county, city, town, school board, or any other person authorized to grant the contracts for employment, and all money due, or to become due under the contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this contract."*

*[Delete this section if your total Contract value is under \$100,000]*

**20. Affirmative action requirements for contracts in excess of \$100,000 and if the Contractor has more than 40 full-time employees in Minnesota or its principal place of business**

The State intends to carry out its responsibility for requiring affirmative action by its contractors.

**20.1 Covered contracts and contractors.** If the Contract exceeds \$100,000 and the Contractor employed more than 40 full-time employees on a single working day during the previous 12 months in Minnesota or in the state where it has its principle place of business, then the Contractor must comply with the requirements of Minn. Stat. § 363A.36 and Minn. R. 5000.3400-5000.3600. A contractor covered by Minn. Stat. § 363A.36 because it employed more than 40 full-time employees in another state and does not have a certificate of compliance, must certify that it is in compliance with federal affirmative action requirements.

**20.2 Minn. Stat. § 363A.36.** Minn. Stat. § 363A.36 requires the Contractor to have an affirmative action plan for the employment of minority persons, women, and qualified disabled individuals approved by the Minnesota Commissioner of Human Rights ("Commissioner") as indicated by a certificate of compliance. The law addresses suspension or revocation of a certificate of compliance and contract consequences in that event. A contract awarded without a certificate of compliance may be voided.

**20.3 Minn. R. 5000.3400-5000.3600.**

- (a) General.* Minn. R. 5000.3400-5000.3600 implements Minn. Stat. § 363A.36. These rules include, but are not limited to, criteria for contents, approval, and implementation of affirmative action plans; procedures for issuing certificates of compliance and criteria for determining a contractor's compliance status; procedures for addressing deficiencies, sanctions, and notice and hearing; annual compliance reports; procedures for compliance review; and contract consequences for non-compliance. The specific criteria for approval or rejection of an affirmative action plan are contained in various provisions of Minn. R. 5000.3400-5000.3600 including, but not limited to, Minn. R. 5000.3420-5000.3500 and 5000.3552-5000.3559.
- (b) Disabled Workers.* The Contractor must comply with the following affirmative action requirements for disabled workers.
  - (1) The Contractor must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
  - (2) The Contractor agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
  - (3) In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minn. Stat. § 363A.36, and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
  - (4) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Commissioner. Such notices must state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.
  - (5) The Contractor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of

Minn. Stat. § 363A.36, of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.

- (c) *Consequences.* The consequences for the Contractor's failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of compliance by the Commissioner, refusal by the Commissioner to approve subsequent plans, and termination of all or part of this Contract by the Commissioner or the State.
- (d) *Certification.* The Contractor hereby certifies that it is in compliance with the requirements of Minn. Stat. § 363A.36 and Minn. R. 5000.3400-5000.3600 and is aware of the consequences for noncompliance.

**21. E-Verify certification (In accordance with Minn. Stat. § 16C.075)**

For services valued in excess of \$50,000, Contractor certifies that as of the date of services performed on behalf of the State, Contractor and all its subcontractors will have implemented or be in the process of implementing the federal E-Verify Program for all newly hired employees in the United States who will perform work on behalf of the State. Contractor is responsible for collecting all subcontractor certifications and may do so utilizing the *E-Verify Subcontractor Certification Form* available at <http://www.mmd.admin.state.mn.us/doc/EVerifySubCertForm.doc>. All subcontractor certifications must be kept on file with Contractor and made available to the State upon request.

**[Signatures as required by the State.]**

## **Attachment A**

### **STATE OF MINNESOTA Health Insurance Exchange Public Awareness Marketing/Outreach Campaign**

#### Responder Overview

Number of Employees:

Number of Employees in Responding Office:

Number of Employees Assigned to Exchange Account:

Approximate Annual Billings:

Approximate Annual Billings for Responding Office:

#### Responder Questions

1. What type of client is best served by your agency?
2. Describe how you would measure campaign success and what metrics you would use to assess the effectiveness of this campaign.
3. Describe how you would approach implementing the Exchange's marketing and advertising campaign within the aggressive timeframe. What is your experience working with immediate and non-flexible timelines?
4. Describe how the firm goes about the development of basic creative strategies and your approach for innovative creative design.
5. Describe the methodology to justify creative and media investments and describe how a return on investment (ROI) is established and measured. What technologies have you developed and/or utilize in order to flawlessly execute and seamlessly track and report? Please provide a sample of a report or campaign analysis that the Exchange would expect to see on an ongoing basis.
6. Describe any unique services the Responder thinks would be helpful in meeting the goals of this RFP.